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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 EMMA C. et al.,

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Plaintiffs,

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v.

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DELAINE EASTIN, et al.,

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Defendants.

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NO. C96-4179 TEH

ORDER RE: OBJECTIONS
TO COURT MONITOR'S
QUARTERLY REPORT
AND SETTING STATUS
CONFERENCE

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15 The Court has reviewed the recent correspondence from the Ravenswood School
16 District (“the District”) and the California Department of Education (“CDE”) to the Court
17 Monitor regarding the Monitor’s RSIP Quarterly Review Report covering the period
18 November 2009-January 2010 (“Second Quarter Report”). Since the concerns raised by the
19 parties implicate the procedures put in place by the First Amended Consent Decree
20 (“Consent Decree”), the Court – after consulting with the Monitor on these developments –
21 furnishes the following guidance to assist in the resolution of these questions.

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23 The Consent Decree directs the Monitor to prepare quarterly reports assessing the
24 District’s compliance with the requirements set forth in the Ravenswood Self-Improvement
25 Plan, or RSIP. “At least seven days prior to finalizing a report, the Monitor shall deliver a
26 draft report to the Parties to allow the Parties to object to any findings or to provide
27 additional evidence relevant to any findings.” Consent Decree § 6.1.2 (as amended August
28 11, 2005). To comply with this procedure, the Monitor indicates in the cover memo for each
draft report that, “[i]f the parties do not object to any findings or provide additional relevant

1 evidence, this draft will become final on” a date seven days following its filing. When the
2 Monitor receives no objections or further evidence by that deadline, he notifies the Court and
3 the parties that the draft report “is now final.”

4 The Monitor filed a draft Second Quarter Report on March 8, 2010. On March 12, the
5 District submitted 41 objections to the draft report. The Monitor amended and finalized the
6 draft report on March 15, correcting two errors identified by the District and responding to
7 the broad questions raised in the District’s objections. Four days later, the Monitor provided
8 more detailed student-by-student responses to each of the District’s objections. On March
9 22, the District renewed many of its objections in a memo to the Monitor, disputing the
10 Monitor’s determinations and requesting that certain student files be redesignated as
11 compliant. The District also requested (1) to be present for the Monitor’s review of files for
12 purposes of monitoring compliance; (2) to receive the names of files or service providers
13 deemed noncompliant; and (3) to receive a written response from the Monitor to the specific
14 concerns raised by the District, “in order to facilitate the continuing improvement of the
15 District’s compliance with the RSIP.”

16 CDE did not object to the draft report, but requested – in a March 15 email to the
17 Monitor – a list of the student files examined for the report, and a five-day extension to
18 respond to the draft. The Monitor supplied a list of noncompliant file names, but did not
19 grant the extension request. In a March 22 video conference, the Monitor agreed to provide
20 counsel a list of all audited files, compliant and noncompliant, within a day of the filing of
21 each draft report. CDE further requested, in a March 25 letter, that the Monitor extend the
22 time frame for objecting to the draft reports from seven to twenty calendar days.

23 The Consent Decree is the framework agreed to by all parties to ensure that children
24 with disabilities in the District receive a free appropriate public education in the least
25 restrictive environment. The authority for measuring the District’s progress toward that goal
26 resides in the Monitor, who “shall at all times retain sole discretion to reach his or her own
27 independent judgments regarding Ravenswood’s compliance with each of the
28 Requirements.” Consent Decree § 6.1.2. The seven-day window for objecting to the

1 Monitor's findings strikes a balance between accountability and finality: the right to object
2 and submit additional evidence requires that the Monitor be accountable to the parties, while
3 the limited window for lodging objections ensures finality and consistency in the Monitor's
4 findings.

5 The Court is concerned that the recent requests by the District and the CDE may
6 upset the balance struck in the Consent Decree. Monitoring the District's compliance is a
7 constant, ongoing process. The findings for one quarter are finalized halfway into the next.
8 Asking the Monitor to revisit a final report – as the District has done – disrupts the
9 monitoring cycle and disturbs the integrity of his findings. Although the seven-day period is
10 a floor, not a ceiling, whether to expand that window – as requested by CDE – is a matter of
11 the Monitor's discretion. If a party disputes the Monitor's final conclusions after raising a
12 timely objection, there is always recourse to the Court. *See* § 7.3. Furthermore, the parties
13 have the ability to amend the Consent Decree if they agree to revised terms. *See* § 12.0.

14 The Court recognizes that the parties have rarely exercised their right to object to the
15 Monitor's findings, and that the novelty of the process brings with it inevitable questions. To
16 that end, the Court encourages the Monitor – on this one occasion – to exercise his discretion
17 and address the District's renewed objections to the Second Quarter Report. However, the
18 Court also advises the parties that the Monitor would be acting well within his authority to
19 deny their requests to alter the monitoring *procedures*. The Monitor has informed the Court
20 that he will not alter the timeframe for responding to draft reports, except as necessary to
21 research objections prior to finalizing the report, nor will he agree to the presence of any
22 party for the review of student files.

23 The Court had stated, at the previous status conference, that it would await the results
24 of the Second Quarter Report before setting the next case management conference. The
25 Court, having reviewed that report, hereby sets the next status conference for **Wednesday**,

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1 **June 30, 2010, at 3:00 PM**, in Courtroom 12. Status conference statements from all parties
2 must be submitted on or before **Wednesday, June 23, 2010**.

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4 **IT IS SO ORDERED.**

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7 Dated: 4/6/10

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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT